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November 15, 2021

The Honorable Denise L. Cote
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, NY 10007-1312

Re: 1:20-cv-10743-DLC; Plaintiff's Third Request for an Adjournment the Initial Conference Scheduled for November 19, 2021 at 10:00 AM

Dear Judge Cote,

The James Law Firm, PLLC represents Plaintiff in the above captioned matter. This matter has been filed as a John Doe against the internet subscriber assigned the referenced IP address. Plaintiff respectfully requests an adjournment of the Initial Pretrial Conference currently scheduled for November 19, 2021 at 10:00 a.m.

On December 20, 2020, Plaintiff filed the instant case against John Doe subscriber assigned IP address 98.113.234.211 claiming Defendant's direct infringement of Plaintiff's works through BitTorrent protocol [CM/ECF 1].

On December 28, 2021, Plaintiff filed a Motion for Leave to Serve a Third-Party Subpoena Prior to a Rule 26(f) Conference ("Motion for Leave") in order to serve a third-party subpoena on Defendant's ISP to obtain the Defendant's identifying information. [CM/ECF 6].

Pursuant to Fed. R. Civ. P. Rule 4(m), Plaintiff was required to effectuate service on the Defendant no later than March 20, 2021. Because Plaintiff's Motion for Leave was pending before the Court at that time, and Defendant's identity unknown to Plaintiff, on March 18, 2021, Plaintiff filed its First Letter Motion for Extension of Time Within Which to Effectuate Service on Defendant ("First Motion for Extension"). [CM/ECF 8].

On March 23, 2021, the Court granted Plaintiff's First Motion for Extension, extending the deadline to effect service of process on Defendant to May 19, 2021. [CM/ECF 9].

On March 23, 2021, the Court entered an Order granting Plaintiff leave to serve a third-party subpoena prior to a Rule 26(f) conference on Defendant's ISP to obtain Defendant's identifying information. Plaintiff issued the subpoena on or about March 24, 2021, and, in

accordance with the allowances provided to both the ISP and the Defendant, expected to receive the ISP response on or about July 2, 2021.

Pursuant to the Notice of Initial Conference entered on March 30, 2021¹⁰, the Initial Conference was scheduled for July 16, 2021 at 2:00 p.m. [CM/ECF 11]. Prior to the conference, the parties are required to confer and submit to the Court a proposed Case Management Plan and Scheduling Order.

Because Defendant had not yet been identified and served, on May 17, 2021, Plaintiff filed a Letter Motion for Extension of Time Within Which to Effectuate Service on Defendant and for an Adjournment of the Initial Pretrial Conference (“Letter Motion for Extension and Adjournment”). [CM/ECF 12].

On May 18, 2021, the Court granted Plaintiff’s Motion for Extension and Adjournment, extending the deadline to effect service of process on Defendant to August 31, 2021 and adjourning the conference to September 20, 2021 at 10:00 a.m. [CM/ECF 13].

On August 31, 2021, Plaintiff filed its Second Letter Motion for Extension of Time Within Which to Effectuate Service on Defendant and to Adjourn the Initial Pretrial Conference (“Second Motion for Extension and Adjournment”). [CM/ECF 14].

Upon receipt of the ISP response, Plaintiff conducted a further investigation to assist in determining whether the individual identified by the ISP is the appropriate defendant for this action prior to attempting to effect service of process on that individual. Based on its further investigation and publicly available resources, Plaintiff identified the subscriber as the true infringer/Defendant.

On September 2, 2021, Plaintiff filed a redacted version of its First Amended Complaint [CM/ECF 15] and filed a Letter Motion for Leave to File Unredacted Versions of its First Amended Complaint, Proposed Summons and Return of Service Under Seal (“Motion for Leave to File Under Seal”). [CM/ECF 16].

On September 2, 2021, the Court granted Plaintiff’s Second Motion for Extension and Adjournment, extending the deadline to effect service of process to October 1, 2021 and adjourned the Initial Pretrial Conference to November 19, 2021. [CM/ECF 17].

On September 7, 2021, the Court granted Plaintiff’s Motion for Leave to File Under Seal. [CM/ECF 18].

Accordingly, on September 7, 2021, Plaintiff filed unredacted versions of its First Amended Complaint and proposed summons under seal. [CM/ECF 19, 20].

On October 1, 2021, Defendant was served via substitution. [CM/ECF 25].

More than twenty-one days have passed since the Defendant was served and Defendant has failed to plead or otherwise defend this action as provided by the Federal Rules of Civil Procedure or request additional time to plead or otherwise defend this action.

As of this date, Plaintiff intends to file its Request for a Certificate of Default Pursuant to Federal Rules of Civil Procedure 55(a).

Additionally, the undersigned is scheduled to appear in another Court in the Eastern District of Virginia also on November 19, 2021.

For the foregoing reasons, a pretrial conference is not appropriate at this time and Plaintiff respectfully requests for an adjournment of the pretrial conference currently scheduled for November 19, 2021 at 10:00 a.m.

Respectfully Submitted,

By: /s/Jacqueline M. James
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*The November 19 conference is cancelled.
The plaintiff shall file the request for
default by November 19, 2021.*

James Cole
11/16/21